IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

CRL.A.No. 191 of 2000()

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CC.183/1994 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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APPELLANT: COMPLAINANT

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C.P.PUSPADATHAN, S/O.PADKARAJU GOWDER
CHEMBAKAPATTA, KANIYAMBATTA P.O.
VYTHIRI.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: ACCUSED & STATE

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1. P.V.SADASIVAN
   PARAKKAL HOUSE
   KANIYAMBETTA POST
   VYTHIRI.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.DEVAPRASANTH.P.J.
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.R.UDAYABHANU, J**

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Crl.A.No.191 of 2000

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Dated this the 8th day of October, 2007

**JUDGMENT**

The appellant is the complainant in C.C.No.183/94 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that the accused purchased 400 sacks of ginger at the rate of Rs.425/- per sack on 12.1.1994 from the complainant and that on the day the accused paid a sum of Rs.19,000/- in cash and issued the impugned cheque for Rs.1,51,000/- dated 15.2.1994 for the balance amount. The cheque when presented on 21.3.1994 got dishonoured for want of funds in the account of the accused. The lawyer notice demanding payment was sent on 28.3.1994. Reply notice was received on 5.4.1994 wherein untenable contentions are raised. He has stated that the complainant along with one Thirupathi Gowder, the accused, was doing a partnership business in the year 1988. It is denied that the complainant was managing the firm and that the accused had

given a signed blank cheque to the complainant for business purposes. It is stated that the entire business of the firm was managed by the accused and there was no occasion to give any signed blank cheques. After the dissolution of the firm there was no other business.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P6. The defence examined DWs' 1 to 3 and got marked Exts. D1 to D4.

4. The trial court found that there was no proper sending of the notice as the date of the notice is mentioned as 18.3.1994. The cheque has been presented on 21.3.1994. The contention that the date mentioned in Ext. D1, the original of the lawyer notice, is a typing error was rejected. In view of the fact that the presentation of cheque on 21.3.1994 is mentioned in Ext. D1 and in the postal acknowledgment card it is seen that the accused received the lawyer notice on 5.4.1994 the finding of the court below on the above point is clearly erroneous. I find that there is no defect in the lawyer notice sent.

5. The other ground relied on by the court below is that

from Ext. P3 ledger extract of the account of the accused it can be seen that the rest of the cheques in the particular series have been presented for collection before 1988 and hence the case of the accused that the impugned cheque was issued before 1988 is probable. The court has also relied on the fact that the cheque amount, name and signature written in Ext. P1 cheque leaf is in a different ink. The admitted fact that the accused and the complainant were partners in a partnership business and that the same dissolved in the year 1988 was also relied. DW3 is the daughter of late Thirupathi Gowder one of the partners of the dissolved firm. The accused have also produced the evidence to show that in January 1994 i.e., on 12.1.1994 the accused was at Nagpur with respect to Makaravilakke festival of Ayyappa temple. I find that the date of the alleged transaction is on 12.1.1994.

6. Considering the amount of cheque involved and the fact that the trial court has relied strongly on the alleged defective notice, I find that the matter requires reconsideration. In the circumstances, the finding of the court below is set aside.

The matter is remitted back to the court below for further consideration and disposal on merits after affording opportunities to the parties to adduce any further evidence if they so desire. The matter will be posted before the court below on 20.11.2007.

The criminal appeal is disposed of accordingly.

**K.R.UDAYABHANU,**
**JUDGE**

csl